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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,629	01/14/2004	Mark James Kline	8194C	4664

27752 7590 12/21/2005

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER

HILL, LAURA C

ART UNIT PAPER NUMBER

3761

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/757,629	Applicant(s) KLINE ET AL.	
	Examiner Laura C. Hill	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,4,5 and 8-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,5 and 8-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action (see Remarks page 5) is persuasive and, therefore, the finality of that action is withdrawn.

### ***Response to Arguments***

Applicant's arguments filed 6 December 2005 have been fully considered but they are not persuasive.

2. In response to Applicant's argument that Schmidt does not disclose or suggest a surface fastening system having different levels of resistance to disengagement in different directions (see Remarks page 6), Schmidt discloses a pressure sensitive adhesive tape for diaper fastening purposes in which one end adheres firmly to the film backing of the diaper and the free end lends itself to easy release/disengagement from a protective cover strip without destroying the adhesive power of the pressure sensitive mass (column 1, lines 45-51). Furthermore, the tape of Schmidt withstands tear and tensile forces (column 2, lines 1-11 as previously cited) and thus has different levels of resistance to force during disengagement of fastener in different directions.

In response to Applicant's argument that 'Schmidt discloses no teaching or suggestion to use a non-rectangular surface fastening strip, and the reference is devoid of any motivation to incorporate the shape disclosed in Vukos' (see Remarks page 7), the motivation to modify Schmidt comes from "three sources: the nature of the problem to be solved, the teaching of the prior art and the knowledge of persons of ordinary skill in

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the art", as per *In re Rouffet*, 149 F3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed.

Cir. 1998) and hence comes from knowledge of those with ordinary skill in the art.

### ***Drawings***

3. The objection to the drawings has been removed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

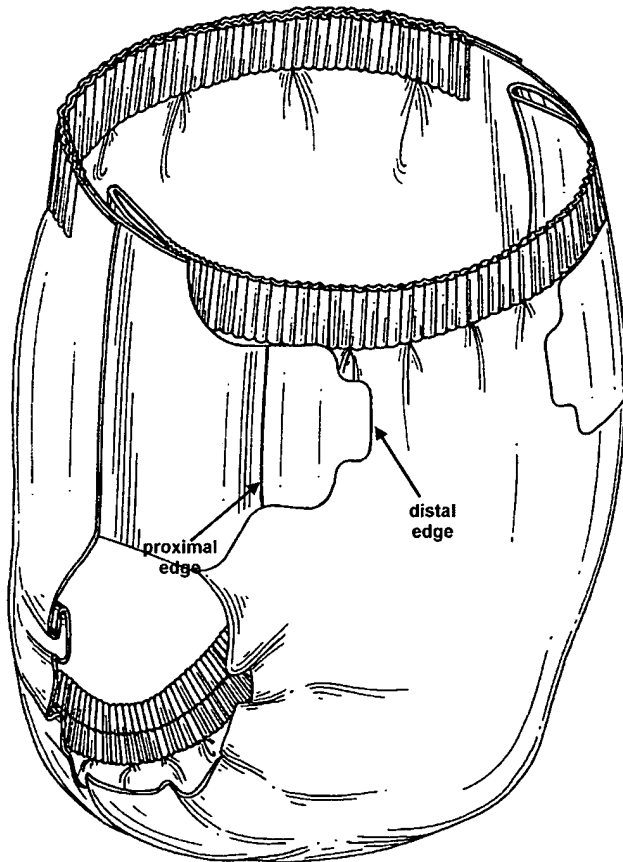
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 4-5 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt (US 3,797,495 herein 'Schmidt'), and further in view of Vukos et al. (US Des. 422,078 herein 'Vukos'). Regarding claims 1 and 8-9 Schmidt discloses a diaper 20 with absorbent pad/chassis 22 to be worn about a wearer (col. 6, ll. 39-43, figure 2) comprising: a surface fastening system 28 with first tape base/fastening element 12 and protective cover strip/second facing fastening element 30, the surface fastening system 28 including an effective Y dimension substantially parallel to the longitudinal article axis (col. 6, ll. 63-68, figure 3), wherein the backing tape used in surface fastening system 28 is able to withstand different tear and tensile forces applied across the tape in varying directions and degrees when user moves (col. 2, ll. 1-11). Schmidt *does not expressly disclose* the Y dimension increasing from a

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distal to proximal edge of the first fastening system. **Vukos** discloses disposable absorbent article to be worn about a user with a Y dimension increasing from a distal to proximal edge (figure 1).

**FIG. 1**

One would be motivated to modify the fastening system of Schmidt with the increasing Y-dimension of Vukos since doing so would provide an easier mechanism to grip and open the tab and since both references disclose wearing articles with fastening systems. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the fastening system, thus providing a fastening system with an increasing Y-dimension from the distal to proximal edge.

Regarding claim 4 Vukos further discloses the proximal/lower edge being longer than the distal/upper edge (figure 1).

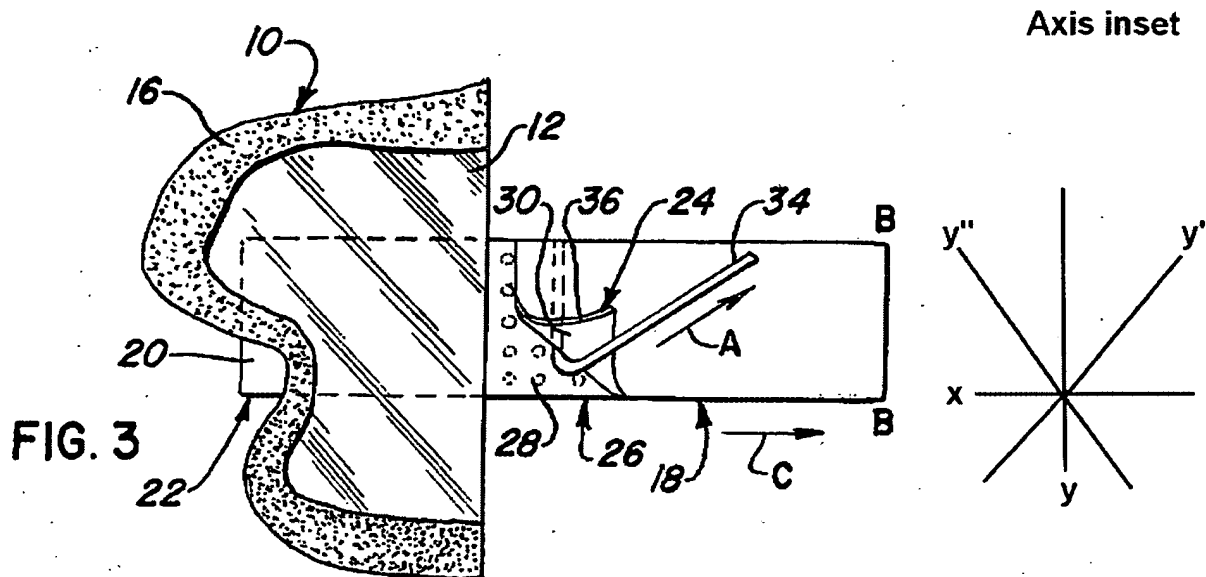
Regarding claim 5 Schmidt/Vukos further disclose protective cover strip/second facing fastening element 30 having a portion of the lower edge being unjoined or at least partially detached from the underlying structure (figure 3).

Regarding claim 10 Vukos further discloses the disposable absorbent article with first and second fastening elements attached to form a waist opening and a pair of leg openings (figures 1 and 4).

5. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt (US 3,797,495; herein 'Schmidt') in view of Vukos et al. (US Des. 422,078; herein 'Vukos'), and further in view of Tritsch (US 3,937,221; herein 'Tritsch').

Regarding claim 11 Schmidt/Vukos *do not expressly disclose* a first peel load value in a plane non-parallel to the xz-plane greater than a second peel load value in the xz-plane. **Tritsch** discloses diaper 10 with tab 18 having separator string 34, where separation is effected by grasping the protruding portion of string 34 and peeling end portion 24 away from central portion from central portion 26 in the diagonal direction of arrow A (i.e.: in a plane non-parallel to the xz-plane/first peel load), thereby lifting up one corner of the folded-over end portion 24 (col. 3, line 8, col. 4, ll. 38-40, col. 5, ll. 1-6, figure 3). Tritsch further discloses the user is then able to grasp free end 24 of tab 18 near end border 36 and pull in a direction indicated by arrow C (in a plane parallel to the xz-plane/second peel load). Since the user must pull in a plane non-parallel to the xz-plane/first peel load first as indicated by arrow A to be able to subsequently pull in a plane parallel to the xz-

plane/second peel load as indicated by arrow C, the first diagonal peel load required to start the tab lifting action is greater than the second parallel peel load.



Regarding claims 12-15 Schmidt/Vukos/Tritsch do not expressly disclose peak peel load or plane projection angle values. Peak peel load and plane projection angles are result effective variables because they are at least dependent on the size of the fastening system and article. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Schmidt/Vukos/Tritsch with peak peel load and plane projection angles since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137.

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The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**







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**Commissioner for Patents**